



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

June 4, 1993

OFFICE OF  
SOLID WASTE AND EMERGENCY  
RESPONSE

Robert C. Galbraith  
Assistant Attorney General  
General Counsel, UST Fund Board  
Iowa Department of Justice  
Hoover Building  
Des Moines, Iowa 50319

Dear Mr. Galbraith:

I am writing in response to your letter dated May 27, 1993, in which you asked whether the U.S. Environmental Protection Agency (EPA) currently requires underground storage tanks (USTs) containing pure toluene to maintain proof of financial responsibility. As discussed below, under the federal regulatory program for USTs, EPA does not currently require owners and operators of USTs containing pure toluene to maintain evidence of financial responsibility for taking corrective action or compensating third parties for releases from those USTs.

EPA's authority for regulating USTs is found in subtitle I of the Resource Conservation and Recovery Act. Under Subtitle I, EPA has promulgated final financial responsibility regulations for owners and operators of petroleum underground storage tanks only. See 40 CFR Part 280.90 through 280.112, enclosed. USTs containing "hazardous substances" (as opposed to petroleum) are not subject to the financial responsibility regulations, by virtue of their absence from Part 280.90 -- Applicability.

For regulatory purposes under subtitle I, an UST storing pure toluene is considered to be a "hazardous substance UST system," which EPA defines in the comprehensive federal UST regulations in Part 280.12 as follows:

"Hazardous substance UST system" means an underground storage tank system that contains a hazardous substance defined in section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) ... or any mixture of such substances and petroleum, and which is not a petroleum UST system.

Toluene is a hazardous substance as defined under section 101(14) of CERCLA. It is listed in 40 CFR Part 302, Table 302.4 -- List of Hazardous Substances and Reportable Quantities. I have enclosed the relevant pages from that list.

EPA issued an Advanced Notice of Proposed Rulemaking on financial responsibility requirements for USTs containing hazardous substances in the Federal Register on February 9, 1988 (see 53 FR 3818). Thus, while EPA has the statutory authority to require financial responsibility for hazardous substance USTs such as those containing toluene, EPA has not yet formally proposed nor finalized such a rule.

I hope the information I have provided satisfies your request. Please contact me if I can be of any further assistance.

Sincerely,

/s/

John M. Heffelfinger  
Special Assistant to the Director  
Office of Underground Storage Tanks

Enclosures

cc: Lee Daniels, U.S. EPA, Region 7